IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1034 (MS) OF 2001

(OLD NO. 16488 OF 2000)

Gulshan Kumar, S/o Harichandra,
Proprietor M/s Vishal Brick Filed.
Landhoura, Roorkee Road,
Haridwar. .....Petitioner.

Versus

1. Deputy Labour Commissioner, Saharanpur.
2. District Magistrate/Collector, Haridwar.

.....Respondents.

Dated: 27.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rajendra Singh, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 28.02.2000 and recovery in pursuance thereof.

Briefly stated, a recovery citation was received by the petitioner by which he is required to deposit a sum of Rs. 40,000/- for the sum awarded by the Labour Court on account of the alleged employment of two child labourers.

The grievance of the petitioner is that at no point of time, notice was issued to him in order to show cause regarding the reply of the notice by showing that he has never engaged any child in the employment

Petitioner has relied upon the judgment dated 08.12.1999 passed in Writ Petition No. 49877 of 1999 Gulshan Kumar Vs. State of U.P. of operative portion of thue aforesaid judgment is quoted below:-

"This petition is being filed challenging imposition of penalty on the basis of judgment of the Apex Court in the case of M.C. Mehrat versus State of Tamil Nadu, AIR 1997 SC 699 impending enquiry under Child Labour (Prohibition and Regulation) Act, 1986 called 'the Act'.

It is contended by the petitioner that objections were filed against show case notice but the same has not been decided by affording an opportunity of hearing as required under law. On the other hand the authorities are proceeding to recover penalty under the show cause notice without conducting, as required under law a proper survey by competent authority who should have decided objections and also taken into account relevant factors (including nature of the undertaking etc. and other mitigating circumstances) which would have been relevant to determine that amount of penalty i.e. whether maximum or lessor amount of penalty contemplated under law should have been imposed or not.

In view of the decisions in the case of M/s Chhota Bhai Munna Bhai and Company, Naini and others Versus State of U.P. 1999 (81) FLR 43), as well as the judgment of the Apex Court in the case of M.S. Mehta (supra), the concerned authorities should not have proceeded arbitrarily.

Authority (competent under the Act) is directed, to keep in mind the above judgments and decide the objections, after affording opportunity of hearing in accordance with law and pass final order/s before imposing and initiating action of recovery of penalty if at all warranted.

It is open to the concerned authority to pass fresh orders under the Act as aforementioned.

Respondents are restrained from taking steps or action for the recovery of the penalty contained in the 'show cause notice' under the Act. The concerned authority shall decide the

objections in accordance with law keeping in mind aforesaid judgment passed and order/s and then take action accordingly."

In view of the aforesaid facts and circumstances, a writ of certiorari is issued quashing the orders dated 28.02.2000. However, liberty is given to the respondents to initiate fresh proceedings after complying the provisions of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

27.06.2006

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